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MUNICIPAL GONE DISTRICT: JURISDICTION IN NEW COURT OF FIRST RESORT

*Vic Fleming**

I. INTRODUCTION

In 1957, as federal troops rolled into Arkansas to quell local unrest over the Little Rock Central High School racial integration crisis, a high profile billboard posed the question: “Who will build Arkansas if her own people do not?”¹ During the next few years, a question of similar spirit will arise: “Who will *rebuild* Arkansas’s judiciary if her own lawyers and judges do not?”

The voters have done their part. Motivated by the promise of non-partisan elections, the year 2000 electorate enacted “An Amendment to the Arkansas Constitution to Revise the Judicial Article,”² now known as Amendment 80. This measure brought about a long-heralded merger of law and equity at the circuit court level and rescinded party primaries for the judiciary as a whole. It also provided a cutting board for the inferior court system—for changes in name, jurisdiction, and venue.

Amendment 80³ establishes “district courts” as “trial courts of limited jurisdiction.”⁴ These courts “shall have the jurisdiction vested

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1. Editorial, *One Step Forward . . . and Two Back*, ARK. DEMOCRAT-GAZETTE, Aug. 20, 2001, at 4B.

2. On the ballot as “Amendment 3” and originally introduced as Senate Joint Resolution 9 in the 1999 Regular Session of the Arkansas General Assembly, this initiated amendment is now Amendment 80 of the Arkansas Constitution. See ARK. CONST. amend. 80.

3. ARK. CONST. amend. 80. This amendment became effective on July 1, 2001. *Id.* § 21.

4. *Id.* § 7(A).

in" municipal, corporation, police, and justice of the peace courts, and courts of common pleas "at the time this Amendment takes effect [and] shall assume the jurisdiction of these courts of limited jurisdiction and other jurisdiction conferred in this Amendment on January 1, 2005."⁵ Moreover, "Municipal Court Judges in office [on July 1, 2001,] shall continue in office through December 31, 2004."⁶

To resolve potential ambiguities, the 2001 General Assembly enacted legislation making the name "district court" effective July 1, 2001,⁷ and specifying that district courts "shall have the jurisdiction vested in the presently established municipal courts."⁸ Thus, jurisdiction *conferred in* Amendment 80 is effective in 2005. Jurisdiction conferred *pursuant to* Amendment 80 will be effective then or later, according to the language of conferring statutes or rules. By pre-existing law, the legislature may make other jurisdictional changes before 2005, but in each instance a valid inquiry will be whether Amendment 80 superseded the enabling law.

Amendment 80 may have settled a century of controversy in the area of inferior courts' "territorial jurisdiction." It may also have provided a foundation to shore up weaknesses in other areas. Inferior court jurisdiction, as mundane a topic as it may seem, merits cornerstone status in any discussion of the judiciary that Arkansas is about to reconstruct. The long-running dispute, which played itself out in cases from 1915 through 1996, is whether people stopped for traffic offenses or arrested in one town with an inferior court may properly be cited into a court of a different town. This type of filing has never been held defective, but it has lacked solid judicial backing.

Municipal (now district) courts are said to have countywide jurisdiction (except in ten counties that contain two judicial districts, in which jurisdiction is "limited to the district in which the court is situated").⁹

5. *Id.* § 19(B)(2).

6. *Id.* § 19(A)(3).

7. Act of Apr. 17, 2001, No. 1693, 2001 Ark. Acts 1693, secs. 1, 3 (codified at ARK. CODE ANN. § 16-17-132 (LEXIS Supp. 2001)).

8. *Id.* at sec. 1 (codified at ARK. CODE ANN. § 16-17-132(a)(1)(A)).

9. ARK. CODE ANN. § 16-17-206(b) (LEXIS Repl. 1999). "The jurisdiction of a municipal court shall be coextensive with the county in which it is situated, except . . . in counties having two (2) judicial districts, the jurisdiction shall be limited to the district in which the court is situated." *Id.* Arkansas counties that are divided into two judicial districts are Sebastian, ARK. CONST. art. XIII, § 5; *see* ARK. CODE ANN. § 16-13-2002 (LEXIS Repl. 1999); Prairie, ARK. CODE ANN. § 16-16-719 (LEXIS Repl. 1999); *see id.* § 16-13-2502 (LEXIS Repl. 1999); Clay, Craighead, and Mississippi, *see id.* § 16-13-1002 (LEXIS Repl. 1999); Lawrence, *see id.* § 16-13-1102 (LEXIS Repl. 1999);

By the thinnest of margins, a majority of the Arkansas Supreme Court has repeatedly held that, when a defendant is arrested in one town and sent to court in another, the issue is *venue*, not *jurisdiction*. The court has never actually reached a constitutional argument raised by allegedly aggrieved parties, though the equal protection issue has been discussed more than once. This issue will undoubtedly be revisited as Amendment 80 endures an arduous implementation process.

Other issues that merit analysis include jurisdictional limitation on felonies, which causes some cases unnecessarily to endure two dockets before final disposition, and cases involving real estate liens, which are statutorily precluded from disposition before judges who are fully qualified to adjudicate them. Also meriting mention is Amendment 80's potential to resurrect the issue of whether jury trials should be available at the inferior court level.

The legal profession in Arkansas would do well to take these matters seriously. Amendment 80 was intended to fix some things in "the system." Lawyers and judges are in the best position to ensure that the repairs are properly implemented.

II. TERRITORIAL JURISDICTION AND VENUE FOR CRIMINAL SUBJECT MATTER JURISDICTION

Whether a person arrested in an area served by one inferior court may rightfully be haled into a different area's court has been debated for years. Legislation, court rules, or both, pursuant to Amendment 80, may resolve this question.

One reading of Amendment 80 is that, effective January 1, 2005, district court judges' jurisdiction must be limited to offenses occurring in the governmental unit ("district") that elects them, irrespective of

Franklin, *see id.* § 16-13-1302 (LEXIS Repl. 1999); Arkansas, *see id.* § 16-13-1902 (LEXIS Repl. 1999); and Logan and Yell, *see id.* § 16-13-2302 (LEXIS Repl. 1999). Subsequent references to "countywide" in this article mean "district-wide" where these counties are concerned. *See also id.* §§ 16-17-119(c) (LEXIS Repl. 1999) (explaining that governing bodies of cities in counties with over 25,000 residents may add municipal court divisions, "each of which shall have jurisdiction coextensive with the county"); 16-17-704 (LEXIS Repl. 1999) (stating that in civil cases, municipal courts have original jurisdiction "coextensive with the county wherein the court is situated"); 16-17-217, 16-19-401 (LEXIS Repl. 1999) (mandating that in townships having a municipal court, justices of the peace "shall have original jurisdiction coextensive with the county"). The same phrase, "coextensive with the county," is used to describe the jurisdiction of the mayor, city, and police courts, but with the qualification that this jurisdiction is as to "crimes and offenses committed within the limits of the city." *See, e.g., id.* §§ 14-44-108, 14-45-106, 16-18-112 (Michie Repl. 1998 & LEXIS Supp. 2001).

whether implementing legislation addresses this point. Another reading is that Amendment 80 is not so clear on this point. Several sections of Amendment 80 merit collective scrutiny for an understanding of the issue. Before examining them, however, examining what has gone before provides a context conducive to understanding the controversy.

A. Historical Overview

Courts have not been of one mind as to whether an inferior court judge elected in one locality should be able to hear a criminal case arising in a different locality, especially when the locality of the offense is in a different county. A significant issue in this debate is the question of forum-shopping. Criticism has been aimed directly at law enforcement, for alleged improper forum-shopping,¹⁰ and, less directly, at the inferior courts themselves, for agreeing to hear cases. However, prosecutors, who are ultimately responsible for where cases are filed,¹¹ have been largely untouched by the controversy.

The Arkansas Supreme Court has discussed but never reached the issue of whether abusive forum-shopping occurred.¹² A leading dissenter in these cases, Justice Darrell Hickman, was squarely against revenue-oriented court selection, though he never suggested that the Attorney General, as chief law enforcement officer for the State, was the appropriate official to curb allegedly improper practices. Whether a directive from the prosecutor at the top of the chain of command would have brought a halt to any actual abuses is open to speculation, and conventional wisdom seems to be that an elected constitutional

10. No state law mandates that law enforcement officers who arrest a person lodge the charges in a particular court. This statutory "silence" has resulted in agencies with statewide and countrywide apprehension jurisdiction lodging charges in district courts that, while having jurisdiction, are not necessarily in the area most closely associated with the arrest.

11. Article VII, section 24 of the Arkansas Constitution of 1874 provided: "The qualified electors of each circuit shall elect a prosecuting attorney." "Prosecuting attorney" is defined as "any person legally elected, appointed, or otherwise designated or charged . . . with the duty of prosecuting persons accused of crimes or traffic offenses." ARK. R. CRIM. P. 1.6(b). It "includes, but is not limited to: (i) a prosecuting attorney and any of his deputies or assistants; and (ii) a city attorney and any of his deputies or assistants." *Id.* "Each prosecuting attorney shall commence and prosecute all criminal actions in which the state or any county in his district may be concerned." ARK. CODE ANN. § 16-21-103 (LEXIS Repl. 1999). Prosecuting attorneys may designate city attorneys to prosecute in municipal courts state misdemeanors occurring in the city. *Id.* § 16-21-115 (LEXIS Repl. 1999).

12. See *infra* note 138.

officer would be unlikely to issue such a directive without a suggestion from the majority of the court that such was appropriate.

The issue of a court's jurisdiction has deep historical roots. Article VI, section 1 of the Arkansas Constitution of 1836 provided that the General Assembly might "vest such jurisdiction as may be deemed necessary in municipal corporation courts."¹³ The task of finding specific legislative enactments creating any such courts was not a productive endeavor, although several acts were found creating specific towns and cities and vesting their mayors and aldermen with broad comprehensive powers.¹⁴ As the nineteenth century wound down, laws were enacted defining cities of the first and second class and vesting them with powers¹⁵ from which emerged mayor's courts,¹⁶ which were distinguished from Justice of the Peace (JP) courts.

The historical status of JPs is a bit easier to grasp, as *Gould's Digest* provided: "Justices of the Peace shall have power and jurisdiction throughout their respective counties . . . to cause to be kept, all laws made for the preservation of the peace [and] to cause to come before them . . . persons who break the peace [or] attempt to break the peace."¹⁷ Article VII, section 20 of the Arkansas Constitution of 1868 provided: "In criminal causes the jurisdiction of justices of the peace shall extend to all matters less than felony for final determination and judgment."¹⁸

In 1873, the General Assembly vested JPs with jurisdiction "coextensive with the county."¹⁹ Given that, by then, first class cities' corporation courts already existed, the intent was that if a crime was committed in the city, if the culprit were apprehended within the county, it was the city court's case; if the crime was committed outside

13. ARK. CONST. of 1836 art. VI, § 1.

14. *E.g.*, Act of Jan. 4, 1845, 1845 Ark. Acts (incorporating the towns of Van Buren and Fort Smith).

15. *See generally* EDWARD W. GANTT, A DIGEST OF THE STATUTES OF ARKANSAS ch. 72, §§ 3194-3219 (1874); W.W. MANSFIELD, A DIGEST OF THE STATUTES OF ARKANSAS ch. 29, §§ 722-748 (1884).

16. In *Harris v. State*, a defendant was arrested and brought before the mayor, who was held to have jurisdiction in the circumstances. 60 Ark. 209, 211, 29 S.W. 640, 641 (1895). In *State ex. rel. Moose v. Woodruff*, the *Harris* scenario was cited as an example of a "corporation court [with] jurisdiction as an examining court within the city limits," making the point that a JP court was not required under *Harris's* facts. 120 Ark. 406, 413-14, 179 S.W. 813, 816 (1915).

17. JOSIAH GOULD, A DIGEST OF THE STATUTES OF ARKANSAS ch. 99, part III, § 1 (1858).

18. ARK. CONST. of 1868 art. VII, § 20.

19. Act of Apr. 29, 1873, No. 135, 1873 Ark. Acts 135, sec. 2.

the city, it was the JP's case. The county line was actually the boundary for "apprehension jurisdiction," for lack of a better phrase, for both courts. The intent appears to have been that "countywide jurisdiction" in the early 1900s meant that if city or county agents could catch a criminal suspect before she reached the county line, then one court or the other would be able to try her—the JP, if the offense had occurred outside the city limits, the corporation court if the offense had occurred within.²⁰

Apparently intending to carry this scheme forward, the Arkansas Constitution of 1874 authorized the legislature to invest city corporation courts with jurisdiction "concurrent" with JPs.²¹ Under this grant of authority, the 1915 General Assembly created for certain cities (easily identifiable as Little Rock and Argenta, now North Little Rock) "municipal courts."²² The judges of these courts were elected at "city elections,"²³ and jurisdiction was "co-extensive with the county."²⁴ In *State ex rel. Moose v. Woodruff*,²⁵ the Arkansas Supreme Court upheld the legislature's power to give a court jurisdiction beyond the "geographical limits" of its town.²⁶ Such jurisdiction has remained countywide,²⁷ but not without being repeatedly litigated.

B. A Look at Case Law

A series of case vignettes may illustrate some of the complexities of venue and jurisdiction. As will be seen, *venue* is and should be the real issue in every case where a person is apprehended in one place and then cited into another for trial, as long as the move is intra-county. As also will be seen, however, *jurisdiction* is a concept that will not go away.

20. See, e.g., ARK. CODE ANN. § 16-18-112(b)(2) (LEXIS Supp. 2001) ("For crimes and offenses committed within the limits of the city, the mayor's jurisdiction shall be coextensive with the county.")

21. ARK. CONST. of 1874 art. VIII, § 43.

22. Act of Mar. 1, 1915, No. 87, 1915 Ark. Acts 87, sec. 2.

23. *Id.* at sec. 4.

24. *Id.* at sec. 10.

25. 120 Ark. 406, 179 S.W. 813 (1915).

26. *Id.* at 414, 179 S.W. at 816.

27. ARK. CODE ANN. §§ 16-17-206(b), -704 (LEXIS Repl. 1999).

1. *From Egypt to Hamburg*

In an early case, Andrew Langstaff was stopped for allegedly speeding through Ashley County's Egypt township, but cited into Hamburg Municipal Court (in adjoining Carter township).²⁸ Purporting to contest *jurisdiction*, Langstaff contended that he should have been sent to a JP court in Egypt. This plea was rejected by the Hamburg municipal judge. On appeal, the circuit court remanded with directions to transfer the case from Hamburg to Egypt.

The State's appeal of this order was dismissed for lack of finality, with Justice George Rose Smith writing, "The circuit court in substance ordered that the *venue* be changed to Egypt township. An order granting or denying a change of venue is not final, for the cause still stands for trial."²⁹

2. *War Eagle Cattle Invasion*

Markham v. Evans,³⁰ "an action to recover for room and board for three head of cattle and damage to a meadow," started in the JP Court of Benton County's War Eagle Township.³¹ According to Justice Jim Johnson, who wrote the court's opinion, cattle that were the Evans' "next door neighbors" were ranging on land owned by the Markhams, who were Sebastian County residents.³² Believing "that the grass was greener on the other side of the fence," the cattle "proceeded to invite themselves" onto the Evans' land.³³ When the Evanses "became weary of their uninvited guests," they sued for \$295 as "compensation for their hospitality."³⁴

The local JP issued a summons to the Sebastian County constable, who served the Markhams.³⁵ By special appearance, the Markhams then moved to quash the service of process.³⁶ They admitted that they owned the cattle, but denied that they (the human beings) had crossed

28. *State v. Langstaff*, 231 Ark. 736, 332 S.W.2d 614 (1960).

29. *Id.* at 737, 332 S.W.2d at 614-15 (emphasis added).

30. 239 Ark. 1154, 397 S.W.2d 365 (1965).

31. *Id.* at 1154-55, 397 S.W.2d at 365-66.

32. *Id.* at 1155, 397 S.W.2d at 366.

33. *Id.*, 397 S.W.2d at 366.

34. *Id.* at 1155, 397 S.W.2d at 366.

35. *Id.*, 397 S.W.2d at 366.

36. *Markham*, 239 Ark. at 1155, 397 S.W.2d at 366.

the county line.³⁷ The Markhams' motion to quash was dismissed and judgment was entered against them.³⁸

On appeal, the Benton County Circuit Court ordered the cattle sold at judicial sale, with the proceeds to be held in the registry of the court.³⁹ A revived motion to quash was granted by the circuit court judge, leaving a lawsuit without a defendant.⁴⁰ The Markhams being out of court, the Evanses were adjudged entitled to the proceeds of the judicial sale.⁴¹ The Markhams appealed, contending that neither the War Eagle JP nor the Benton County Circuit Court had *jurisdiction of their persons* and, thus, the judgment rendered against them, the basis for the judicial sale, was void ab initio.⁴²

The Arkansas Supreme Court agreed, finding that, under title 26, section 305 of the Arkansas Statutes,⁴³ a JP's jurisdiction "is coextensive with the county in which he is elected or appointed, or countywide" and a JP has jurisdiction only "within his county and may not issue process to be served upon a defendant in any other county."⁴⁴ The court remanded for proceedings to determine ownership of the money, hinting: "We view the money as standing in the stead of the cattle."⁴⁵

3. *Pope-Yell Peel Appeal*

Fifteen years after *Markham*, Justice Smith wrote, in *Peel v. Kelley*,⁴⁶ that *Markham* did not "involve[] a constitutional question, . . . [but] merely construed an 1873 act, still in effect, which provides that the jurisdiction of [JPs] shall be coextensive with the county and that the venue shall be in the township *in which the defendant resides*."⁴⁷ He wrote that the statute in point "made no attempt to allow a justice of the peace to issue process against a resident of another county; so we held he could not do so."⁴⁸

37. *Id.*, 397 S.W.2d at 366.

38. *Id.*, 397 S.W.2d at 366.

39. *Id.* at 1155-56, 39 S.W.2d at 366.

40. *Id.*, 397 S.W.2d at 366.

41. *Id.*, 397 S.W.2d at 366.

42. *Markham*, 239 Ark. at 1155-56, 39 S.W.2d at 366.

43. ARK. STAT. ANN. § 26-305 (Bobbs-Merrill 1947). This statute is the codification for Act 135 of 1873, cited *supra* note 19.

44. *Markham*, 239 Ark. at 1156, 397 S.W.2d at 366.

45. *Id.* at 1157, 397 S.W.2d at 367.

46. 268 Ark. 90, 594 S.W.2d 11 (1980).

47. *Id.* at 92, 594 S.W.2d at 12.

48. *Id.*, 594 S.W.2d at 12.

Peel held that a Pope County resident could sue a Yell County resident in Pope County Municipal Court on a contract to be performed in Yell County.⁴⁹ In upholding the venue provisions of the Small Claims Procedure Act of 1977,⁵⁰ *Peel* may also prove noteworthy, post-Amendment 80, for some common sense dicta:

The statutory jurisdiction of municipal courts . . . need not be exactly coextensive with the statutory jurisdiction of justices of the peace. It may be coextensive with whatever jurisdiction could be vested in justices of the peace . . .

....

. . . If there is a valid basis for personal and subject-matter jurisdiction, there has never been any reason why the legislature cannot authorize the service of process upon a defendant outside the court's territorial jurisdiction.⁵¹

Justice Smith opined that, in fixing venue, the Small Claims Procedure Act "necessarily contemplates correlative personal jurisdiction If the statute does not authorize . . . service . . . outside the county, then the language permitting the suit to be brought in either of two counties is meaningless" and, further, that municipal courts "have no necessary connection with county lines."⁵² All in all, *Peel* is

49. *Id.* at 90, 594 S.W.2d at 11-12.

50. ARK. CODE ANN. § 16-17-606 (LEXIS Repl. 1999). "When a defendant has contracted to perform an obligation in a particular county, an action based on that obligation may be commenced and maintained either in the county where such obligation is to be performed or in the county which the defendant resides at the commencement of the action." *Id.*

51. *Peel*, 268 Ark. at 91-92, 594 S.W.2d at 12-13 (citing *State ex. rel. Moose v. Woodruff*, 120 Ark. 406, 179 S.W. 813 (1915)). Justice Smith noted that an 1869 law laying venue for partition actions in the county where the land is "did not specifically say that process may be served outside the county." *Id.* at 93, 594 S.W.2d at 13. But it is illogical, he maintained, to conclude that an owner of an interest in land "is powerless to obtain partition because his cotenant lives in another county." *Id.*, 594 S.W.2d at 13. He also cited a 1939 law that laid venue for personal injury or wrongful death in the county of the incident or of the injured person's residence. *Id.*, 594 S.W.2d at 13. Only by implication did this law authorize service outside the county. *Id.*, 594 S.W.2d at 13. Yet, in logic, no one would believe the intent was "to destroy the remedy . . . unless the wrongdoer could be served within the county fixed as the venue." *Id.*, 594 S.W.2d at 13.

52. *Id.*, 594 S.W.2d at 13.

Such a court may sit in a town lying just inside a county line and having a trade area that crosses that line. If a small grocer and his customer have a dispute involving a charge account . . . , they may want the matter settled by the municipal judge That the grocery is on one side of the county line and the customer on the other is absolutely immaterial.

Id., 594 S.W.2d at 13.

noteworthy for its judicious treatment of a legislative innovation de-emphasizing the county line as a barrier to simple civil justice. Granted, *Peel* was in a civil case. A different statute, with similar intent for criminal cases, did not fare so well a few years later.⁵³

4. "Great Mischief" Cited

Perhaps the most notorious case on inferior court jurisdiction is *Pulaski County Municipal Court v. Scott*.⁵⁴ Upholding the creation of a county municipal court, by the thinnest of margins, the supreme court held that a county was a "municipal corporation" for purposes of statutory eligibility to create such a court. The specifics of *Scott*'s holding add little to the topic at hand, but Justice Hickman's dissent is at once both priceless and portentous:

"Municipal Corporations" is interpreted to mean "county" in this instance, without regard to any comprehension of the Judicial Article.

The constitution, in defining municipal corporation courts . . . provides . . . : "Corporation Courts for Cities and Towns," [not] "cities, towns and counties." . . . [T]he great mischief behind this case was . . . *Woodruff*, [where w]e held, contrary to all principles of government, that a Little Rock Municipal Court had jurisdiction county-wide. This is the only government entity to my knowledge that has powers beyond its borders. That decision, however wrong in my judgment, has been the law so long it probably cannot be overturned. But this should not lead to the conclusion that if a city court can have jurisdiction county-wide, a county municipal court is justified.⁵⁵

53. See *Sexson v. Mun. Court of Springdale*, 312 Ark. 261, 849 S.W.2d 468 (1993); see *infra* text accompanying notes 94-101.

54. 272 Ark. 115, 612 S.W.2d 297 (1981). *Scott*'s notoriety is bottomed upon its four opinions (never mind that the initial judge of the court involved later resigned under a cloud of controversy and became a key figure in the now infamous federal Whitewater investigation). Justice Frank Holt wrote for the majority; Chief Justice Richard Adkisson concurred in a brief opinion; Justice Robert Dudley authored an opinion concurring in part and dissenting in part, joined in by Justice John Purtle; and Justice Darrell Hickman's dissent was joined in by Justice George Rose Smith.

55. *Scott*, 272 Ark. at 125-26, 612 S.W.2d at 302 (1981) (Hickman, J., dissenting). Justice Hickman may have over-hyperbolized, as title 14, chapter 56, section 413 of the Arkansas Code, giving cities with planning commissions "territorial jurisdiction" over land lying within five miles of their corporate limits, is a law giving a governmental entity power beyond its borders. In later dissents, he and other jurists seem to stick to the concept of *courts* not having this type of extra-territorial jurisdiction—although Justice David Newbern's majority opinion in *State v. Webb*, 323 Ark. 80, 913 S.W.2d

5. *Horns Blown from Springdale to Prairie Grove*

Shortly after *Scott*, Roy Lee Horn and Sam Dean Horn were arrested in Springdale, were tried and convicted in Prairie Grove Municipal Court, and unsuccessfully appealed to Washington County Circuit Court and the Arkansas Supreme Court.⁵⁶ Their counsel specifically argued *venue* alone in the trial court.⁵⁷ The circuit judge held that the law does not require a defendant to be charged in the court nearest his arrest. Writing for a razor thin majority, Justice Perlesta A. ("Les") Hollingsworth noted that

appellants make an equal protection argument based on the inability of county residents to vote for a municipal judge who has countywide authority. The record . . . does not indicate this objection was raised below or that the appellants stated their voting rights were denied We will not consider matters raised for the first time on appeal.⁵⁸

The court cited two sections of the Arkansas Statutes: section 22-709,⁵⁹ for granting municipal courts countywide jurisdiction, and section 22-721,⁶⁰ for there being no "automatic right [for a] change of venue."⁶¹

259 (1996), cites a United States Supreme Court case where a municipal court was given jurisdiction three miles beyond its city's limits. See *infra* note 114.

56. Horn v. State, 282 Ark. 75, 665 S.W.2d 880 (1984).

57. *Id.* at 76-77, 665 S.W.2d at 881. The court's opinion quoted the following colloquy from the circuit court appeal:

The Court: Now, gentlemen, is there any stipulation as to the facts? Are you wanting this court to resolve *jurisdiction*?

Mr. Murphy: *Venue*, Your Honor.

The Court: *Venue* only?

Mr. Butler: Just *venue*, Your Honor.

The Court: Do you want to make any stipulation as to the facts involved? You are only wanting to challenge *venue*?

Mr. Murphy: I am only challenging *venue*. I will stipulate that one Horn boy was 20 years of age . . . and that the license was not the proper license on the vehicle.

The Court: That's what I'm getting at. Assuming for a minute that the Court finds *venue* was improper, then that would end the matter; . . .

Mr. Murphy: I'll plead nolo. I'll go ahead and stipulate the facts; I am not arguing on that. All I said I would fight was *venue*.

Id. (emphasis added).

58. *Id.* at 77, 665 S.W.2d at 881.

59. ARK. STAT. ANN. § 22-709 (Bobbs-Merrill 1947) (codified as amended at ARK. CODE ANN. § 16-17-206(b) (LEXIS Repl. 1999)).

60. ARK. STAT. ANN. § 22-721 (Bobbs-Merrill 1947) (codified as amended at ARK. CODE ANN. § 16-17-116 (LEXIS Repl. 1999)) (permitting a change of venue from one

A blistering dissent from Justice Hickman was joined in by Justices Adkisson and Purtle:

[T]he appellants challenge the power of the municipal court of . . . a small community . . . in Washington County . . . to adjudicate a criminal offense that occurred in . . . a large community [therein].

The problem of concurrent jurisdiction of municipal courts . . . is a growing one [T]here is no constitutional or statutory provision to regulate the proliferation of municipal courts [This] will continue to cause us a problem. The municipal court in Prairie Grove was created by Act 1171 of 1975, [with] countywide jurisdiction Undoubtedly, the responsibilities and duties of that court have increased, because the salary was at least tripled in 1979

. . . . By what right does . . . Prairie Grove . . . cause a person arrested in . . . Springdale, for an offense, to be subject to the judgment of Prairie Grove? The arresting . . . deputy . . . took the case to . . . Prairie Grove . . . [U]nder the present scheme . . . the arresting officer decides where a person will go. It is a ridiculous situation. In my judgment the Prairie Grove Municipal Court is not constitutionally valid and is nothing more than a city court with jurisdiction limited to the boundaries of the municipality; therefore, it had no *jurisdiction* to try this case, and it did not have *venue* over an offense committed in the City of Springdale.

I can think of no legitimate reason that a police officer could have for arresting a person within the city limits of one city, which has a municipal court, and transporting that person across the county to a small town which also has a municipal court. Certainly, the motive cannot be the administration of justice and is probably nothing more complicated than assisting the city in raising revenue.⁶²

6. *From Pea Ridge to Rogers*

Not long after *Horn*, Albert Tiner was charged with DWI in Pea Ridge City Court. Losing a motion to change venue to Rogers Municipal Court, he successfully petitioned Benton County Circuit Court for a writ of prohibition, gaining a venue change to Rogers as

municipal court in a county to another where a prejudiced judge would prevent a fair and impartial trial).

61. *Horn*, 282 Ark. at 77, 665 S.W.2d at 881.

62. *Id.* at 78-79, 665 S.W.2d at 881-82 (Hickman, J., dissenting) (emphasis added) (citations omitted).

requested.⁶³ The city court appealed and the Arkansas Supreme Court affirmed.⁶⁴ Writing for the majority, Chief Justice Jack Holt, Jr., saw the issue as simple: title 19, section 1102 of the Arkansas Statutes gave the city court the jurisdiction a JP would have, but title 22, section 725 provided that a JP's jurisdiction is subject to a motion for change of venue if violation of a state statute is charged; thus, in the factual scenario presented, the motion to change venue automatically divested the city court of *jurisdiction*.⁶⁵

Tiner stands alone as the one case where the *defendant* used the law to get his case moved to a more distant court. Nevertheless, Justice Hickman dissented, saying,

In my opinion the legislature cannot confer *jurisdiction* in a criminal case upon a municipal court when the act is committed beyond its corporate limits. That was the intent of the constitution in its scheme of inferior courts.

The effect of the majority's decision is that an offense committed in one city can be tried in another. This is not a question of *venue*, but of *jurisdiction*.⁶⁶

7. *Keeping Up with Jones*

Shortly after *Tiner*, Timothy Jones was arrested for DWI in the Benton County segment of Springdale and charged in Springdale Municipal Court, in Washington County, the judge of which was elected by "the voters of the city from both counties."⁶⁷ Convicted, he appealed to Washington County Circuit Court, where the judge granted an oral motion for a writ of prohibition, concluding that the municipal court had no jurisdiction over offenses occurring in Benton County.⁶⁸ Justice Hickman, writing for a unanimous court, wrote, "He was right."⁶⁹

63. City Court v. Tiner, 292 Ark. 253, 254, 729 S.W.2d 399, 399 (1987).

64. *Id.*, 729 S.W.2d at 399.

65. *Id.* at 254-55, 729 S.W.2d at 399.

66. *Id.* at 255, 729 S.W.2d at 400 (Hickman, J., dissenting) (emphasis added) (citation omitted).

67. Springdale v. Jones, 295 Ark. 129, 130, 747 S.W.2d 98, 98 (1988).

68. *Id.*, 747 S.W.2d at 98.

69. *Id.*, 747 S.W.2d at 98 (citing ARK. CONST. art. II, § 10) ("[T]he accused shall enjoy the right to a . . . trial . . . by impartial jury of the county in which the crime shall have been committed . . .").

8. *From East of Elkins to West Fork*

Shortly after *Jones*, the supreme court upheld the DWI conviction of Billy Pschier, who ran his vehicle into a ditch "slightly east of Elkins" (which had a municipal court); was jailed in Fayetteville (which had a municipal court); and was then tried in West Fork Municipal Court.⁷⁰ On trial de novo in circuit court, the defendant argued "it was prejudicial error" for him to wind up in West Fork under those circumstances.⁷¹

Arguments about the jurisdiction and venue of the municipal court fell by the way, because the circuit court trial was fair (there being "no allegation to the contrary").⁷² On appeal the defendant alleged that the arresting officers had employed improper "forum shopping" and that municipal judges who are not elected countywide should not have jurisdiction beyond the geographical boundaries of the cities in which they sit; however, the court did not reach those issues.⁷³

9. *Arkansas Cannot Annex Oklahoma*

Contemporaneously with *Pschier*, the court considered the case of Garry Griffin, a Springdale resident, arrested for DWI in the Washington County portion of Springdale; jailed in Fayetteville; and then cited into Elkins Municipal Court, about eighteen miles from Springdale.⁷⁴ Griffin objected to *venue* based on the due process and equal protection clauses of the Constitution and title 16, chapter 85, section 201 of the Arkansas Code, providing that, in an arrest without a warrant, a defendant shall be taken to "most convenient magistrate" in the county of the arrest.⁷⁵ The municipal court overruled the objections to venue, and Griffin, convicted, appealed to circuit court, received a trial de novo, and was again convicted.⁷⁶ His appeal to the supreme court cited the alleged errors of the municipal court.⁷⁷

Justice Dudley, for the majority, noted that although the court did not reach a decision on the question, municipal court venue may have

70. *Pschier v. State*, 297 Ark. 206, 206-07, 760 S.W.2d 858, 858-59 (1988).

71. *Id.* at 207, 760 S.W.2d at 859.

72. *Id.*, 760 S.W.2d at 859.

73. *Id.*, 760 S.W.2d at 859.

74. *Griffin v. State*, 297 Ark. 208, 209, 760 S.W.2d 852, 853 (1988).

75. *Id.* at 209, 760 S.W.2d at 853.

76. *Id.*, 760 S.W.2d at 853.

77. *Id.*, 760 S.W.2d at 853.

been improper.⁷⁸ However, because the defendant received a new trial in the circuit court, with proper venue, there was no justification for reversing the judgment.⁷⁹ Justice Tom Glaze concurred, but was concerned about the unanswered venue question.⁸⁰

Dissenting, Justice Hickman decried “the folly a court can reap when it will not follow the constitution.”⁸¹ Pointing to *Woodruff*, he said the court “made a serious mistake in its interpretation of the constitution” by concluding “that the Little Rock and North Little Rock municipal courts could have county-wide jurisdiction, . . . even though the judges were only elected as city officials.”⁸² *Woodruff*’s rationale, he said, lay in affirming the legislature’s grant of jurisdiction beyond city boundaries on the basis “that the constitution did not say you couldn’t give a city court extra-territorial jurisdiction. Of course, the constitution doesn’t say that Arkansas cannot annex Oklahoma either.”⁸³

According to Justice Hickman, the *Woodruff* court “ignored . . . the overall scheme for lower courts and paved the way for the current proliferation of municipal courts operating beyond the bounds of constitutional restraints.”⁸⁴ With “equal jurisdiction throughout the county,” he said, “they can get their cases merely on the basis of the decision of the arresting officer. It is undoubtedly a one of a kind court

78. *Id.*, 760 S.W.2d at 853.

79. *Id.*, 760 S.W.2d at 853.

[T]hough the municipal court venue might have been erroneous, a point we do not reach, the . . . statute provides for an appeal to circuit court, where the accused is entitled to an entirely new trial The appellant does not question . . . that he received a fair trial, with proper venue, in circuit court Therefore, there is no basis for reversing the judgment.

Id. at 209, 760 S.W.2d at 853.

80. *Griffin*, 297 Ark at 209-10, 760 S.W.2d at 853-54.

[V]enue is distinguishable from [subject matter] jurisdiction . . . in that it commonly pertains to geographical subdivisions, relates to practice and procedure and may be waived [F]ive municipal courts . . . in Washington County . . . [have] subject matter jurisdiction of traffic offenses [N]o venue statute . . . provides [that] these misdemeanor offenses must be filed in a municipal court located within a prescribed geographical boundary.

....

The General Assembly’s failure to provide a venue law for . . . criminal proceedings in municipal court was not argued [W]hat effect this omission might have remains unanswered [T]he General Assembly has the authority, as well as the responsibility, to resolve this venue question.

Id. at 210-11, 760 S.W.2d at 854 (Glaze, J., concurring) (citation omitted).

81. *Id.* at 212, 760 S.W.2d at 855 (Hickman, J., dissenting).

82. *Id.*, 760 S.W.2d at 855 (Hickman, J., dissenting).

83. *Id.*, 760 S.W.2d at 855 (Hickman, J., dissenting).

84. *Id.*, 760 S.W.2d at 855 (Hickman, J., dissenting).

system.”⁸⁵ He then noted that our current court system was probably far different from what was envisioned by the constitution’s drafters.⁸⁶

“I cannot say,” Justice Hickman said, “exactly when it occurred to some cities and counties that getting a municipal court was the thing to do, but the idea has caught on.”⁸⁷ He noted that forty-five municipal courts had been created since 1970, owing in part to Act 240 of 1973,⁸⁸ which allowed municipal courts to be established in second class cities. In *Scott*, he said “we compounded our past error and approved the creation of an entirely new court creature—a county municipal court. That such . . . was authorized by the constitution is simply laughable.”⁸⁹

Judge Hickman rhetorically pondered why the deputy sheriff who arrested Griffin in Springdale (population 25,556), took him to the small town of Elkins (population 673), for his trial.⁹⁰ The judge then asked:

Is this the kind of court system the drafters of the constitution created? Nonsense.

. . . To me the question is *jurisdiction*, which we can raise on our own. The municipal courts of Elkins and West Fork have no jurisdiction over misdemeanors committed outside their city limits . . .

. . .

The court can ignore the problem *and hope a constitutional amendment will be passed* or that these cases won’t persist . . .

85. *Id.* at 212-13, 760 S.W.2d at 855 (Hickman, J., dissenting).

86. *Griffin*, 297 Ark. at 212-13, 760 S.W.2d at 855 (Hickman, J., dissenting).

I can only suppose that the court in 1915 thought there would never be more than one or . . . two courts in a county . . . [C]ould it be seriously argued that the court, or the drafters of the constitution, envisioned a situation like . . . present-day Pulaski County: six municipal courts, most empowered to hear identical cases, and, with no legal means of preventing overlapping jurisdiction, receiving their cases on the whim of the arresting officer?

Id. at 213, 760 S.W.2d at 855 (Hickman, J., dissenting).

87. *Id.* at 214, 760 S.W.2d at 856 (Hickman, J., dissenting).

88. Act of Mar. 7, 1973, No. 240, 1973 Ark. Acts 240 (codified at ARK. CODE ANN. §§ 16-17-401 to -403 (LEXIS Repl. 1999)).

89. *Griffin*, 297 Ark. at 214, 760 S.W.2d at 856 (Hickman, J., dissenting) (quoting Pulaski County Mun. Court v. Scott, 272 Ark. 115, 612 S.W.2d 297 (1981)).

90. *Id.* at 215, 760 S.W.2d at 857 (Hickman, J., dissenting).

[Was it] because the justice was better there? I expect not. Perhaps he wanted to help Elkins out in its revenue raising efforts. In fiscal year 1988, Elkins collected \$46,353.00 in fines. Perhaps the sheriff’s office favors Elkins, or maybe it is just a matter of spreading business around . . . I cannot think of one good reason for taking Griffin, a Springdale resident arrested in Springdale, to the Elkins court.

Id., 760 S.W.2d at 857 (Hickman, J., dissenting).

I get the impression," he concluded, "that . . . these are considered little cases involving little people . . . I suppose it will take a scandal to remedy this situation . . . [A]nytime a policeman can decide which judge will determine the fate of the defendant, there is an open invitation to corruption."⁹¹

Judge Newbern added in his dissent that it was time for Arkansas to consider moving to a different court system.⁹²

10. *Inter/Intra-County/City?*

Five years after *Jones*⁹³ the supreme court voided a statute enacted in response to that decision.⁹⁴ Gina Sexson, arrested for DWI in the Benton County part of Springdale, was convicted in that city's municipal court, which was "situated in Washington County."⁹⁵ When her appeal to Washington County Circuit Court was dismissed for lack of jurisdiction, she asked that court for a writ to prohibit enforcement of the judgment, arguing that title 16, chapter 17, section 206 of the Arkansas Code, as then written—allowing an inter-county municipal court in Springdale—was unconstitutional.⁹⁶ The lower court upheld

91. *Id.* at 216, 760 S.W.2d at 857 (Hickman, J., dissenting) (emphasis added).

92. *Id.* at 217, 760 S.W.2d at 858 (Newbern, J., dissenting).

Our need for a new judicial article is pressing. This is not a time for timidity . . . While I am not certain the void created by limiting municipal courts' powers to the geographical limits of the cities they serve can be . . . readily filled . . . , I am convinced it is the price we should be willing to pay to correct an absurd and unfair situation.

Id., 760 S.W.2d at 858 (Newbern, J., dissenting) (emphasis added).

93. 295 Ark. 129, 747 S.W.2d 98 (1988); *see supra* text accompanying notes 67-69.

94. *Sexson v. Mun. Court*, 312 Ark. 261, 849 S.W.2d 468 (1993).

95. *Id.* at 262, 849 S.W.2d at 468.

96. *Id.*, 849 S.W.2d at 469. Section 206(b)(2) at that time provided that [t]he jurisdiction of a municipal court shall be coextensive with the county in which it is situated except [i]n cities which are primarily located in one county but the city limits extend into an adjacent county, the jurisdiction shall include that portion of the city limits which extends into the adjacent county.

ARK. CODE ANN. § 16-17-206(b)(2) (Michie Supp. 1991) (current version at ARK. CODE ANN. § 16-17-206(b) (LEXIS Repl. 1999)). In *Jones* the court had said that the Arkansas Constitution prohibits Springdale from having jurisdiction over criminal offenses committed in Benton County. *Springdale v. Jones*, 295 Ark. 129, 130, 747 S.W.2d 98, 98 (1988). In *Sexson* the court stayed with the same reasoning:

Under our constitution the jurisdiction of our municipal courts is concurrent with and no greater than jurisdiction of our justice of the peace courts, which we interpret to be countywide . . . [I]t is obvious that the jurisdiction of a municipal court is confined to the county in which it is situated. [The legislation in question, which] provides in part that the jurisdiction of

the law; the supreme court, in an opinion by Chief Justice Jack Holt, struck it down.⁹⁷ Denial of a prohibition writ is generally non-appealable. However, finding that a constitutional question was presented as to section 206(b)(2), the court treated the case as an original prohibition cause in the supreme court and granted the writ.⁹⁸

Justice Steele Hays, in a dissenting opinion joined in by Justice Donald Corbin, argued that the issue was "whether anything in the Constitution of Arkansas limits the power of the legislature to extend the territorial jurisdiction of a municipal court into an adjoining county. The trial court held there is not and that holding was, I believe, entirely correct."⁹⁹ The dissenters objected to the majority's overlooking *Peel* (municipal court jurisdiction *need not* be exactly coextensive with JP jurisdiction, but *may* be coextensive with *whatever* jurisdiction *could be* vested in JPs) and *Woodruff* (no constitutional limitation on power to vest jurisdiction in municipal courts beyond the geographical limits of municipalities) in favor of one allegedly out-of-context cite:

[T]he majority limits its scrutiny of the Constitution to that brief segment of article 7, § 40 which provides that [JPs] "shall be conservators of the peace within their respective counties" That proviso, lifted out of context, is only one of six provisions in § 40 defining the jurisdiction [JPs] "[C]onservator of the peace" is a term of art [that] means the judicial officer is authorized to make arrests [I]n addition to the other aspects of jurisdiction listed in § 40, [a JP] has the power to make arrests. The intent of that provision, read in context, is not to restrict all authority to the territorial limits of the county

. . . .
 . . . [T]he legislature has the power to extend the jurisdiction of a municipal court beyond the boundaries of the county in which it primarily lies. I find nothing in the Constitution inconsistent with that power and . . . we are duty bound to uphold the constitutionality of the act¹⁰⁰

Analyzing the legislation, Justice Hays found it to be fair in all respects to both counties involved and, at a minimum, would have remanded

municipal courts shall be enlarged to include portions of the city limits that extend into other counties, is unconstitutional.

Sexson, 312 Ark. at 265-66, 849 S.W.2d at 470.

97. *Sexson*, 312 Ark. at 265, 849 S.W.2d at 470.

98. *Id.* at 266, 849 S.W.2d at 470.

99. *Id.* at 267, 849 S.W.2d at 471 (Hays, J., dissenting).

100. *Id.* at 267-69, 849 S.W.2d at 471-72 (Hays, J., dissenting).

with directions to join the State as a party, so that it could be represented in a case involving the constitutionality of a statute.¹⁰¹

11. *Webb of confusion*

In *State v. Webb*,¹⁰² several defendants had been arrested for misdemeanors allegedly committed in areas of Benton County other than Rogers or Bentonville.¹⁰³ Cited into the municipal courts of these two cities, the defendants successfully sought prohibition from the Benton County Circuit Court, which held that “venue would be improperly laid in any municipal court with respect to any offense alleged to have occurred outside the *municipality served by the court*.”¹⁰⁴ The State appealed.

For another thin majority, Justice Newbern wrote that it was “understandable” to call the issue *venue*, because the lower court was dealing with “where a trial may be had,” but he felt that the issue was “more properly characterized as . . . territorial jurisdiction.”¹⁰⁵ If “the allegation of a charging instrument were that an offense occurred outside the territorial jurisdiction of the court, then a judgment rendered by the court would be void.”¹⁰⁶ A criminal trial “must be held in the county in which the crime was committed,” subject to laws governing changes in venue.¹⁰⁷ While circuit courts are limited to trying crimes that occur in the counties, or judicial districts, in which they sit, the court noted, municipal courts are not so limited. “To the contrary, our Constitution and Code both authorize a municipal court to assert limited subject-matter jurisdiction throughout the county in which it

101. *Id.*, 849 S.W.2d at 471-72 (Hays, J., dissenting).

102. 323 Ark. 80, 913 S.W.2d 259 (1996), *supp. op. on denial of reh'g*, 323 Ark. 87-A, 920 S.W.2d 1 (1996).

103. *Id.* at 82, 913 S.W.2d at 261.

104. *Id.* at 83, 913 S.W.2d at 261 (emphasis added). Compare the court’s chosen phrase, “municipality served by the court,” with similar phrases in Amendment 80. *E.g.*, ARK. CONST. amend. 80, § 7(D) (“A District Judge may serve in one or more counties”); *id.* § 16(D) (“All . . . Judges shall be qualified electors within the geographical area from which they are chosen, and . . . shall reside within that geographical area at the time of election and during their period of service. A geographical area may include any county contiguous to the county to be served when there are no qualified candidates available in the county to be served”); *id.* § 17(A) (“Circuit Judges and District Judges shall be elected on a nonpartisan basis by a majority of qualified electors voting for such office within the circuit or district which they serve”).

105. *Webb*, 323 Ark. at 83, 913 S.W.2d at 261 (emphasis added).

106. *Id.*, 913 S.W.2d at 261.

107. *Id.*, 913 S.W.2d at 261.

sits.”¹⁰⁸ According to Justice Newbern, “Whether the issue be . . . venue or territorial jurisdiction, nothing in our Constitution or Code dealing directly with the place in which misdemeanor charges must be tried limits it to the city in which the court sits. The territorial jurisdiction of municipal courts extends throughout the counties in which they sit.”¹⁰⁹

The *Webb* appellees argued that allowing a municipal court to try a crime occurring “outside the limits of the city in which it is situated creates two classes of persons, one of which is denied its right to equal protection of the laws.”¹¹⁰ Alluding to title 16, chapter 17, section 209(a) and the Arkansas Code, they argued that a candidate for municipal judge must be

“an elector of the judicial subdivision wherein the court sits.” . . . That is, one who is not a resident of Bentonville, for example, may not be a candidate in the election for judge of the Bentonville Municipal Court. Additionally, one who does not reside in Bentonville, for example, may not vote in the election of Bentonville’s municipal judge.¹¹¹

Perceiving the appellees to argue that they “would somehow be prejudiced if they were to be tried in a court they could not help elect,” the court emphasized that “jurisdiction of the courts in criminal cases is based on the *territory* in which crimes are committed and not on the residence or voting privileges of the persons who commit the crimes.”¹¹² Based on *Griffin*, the court was “not so certain that one . . . convicted in a municipal court can get the issue of equal protection to

108. *Id.*, 913 S.W.2d at 261. The court went on to re-affirm precedent:

Unless the organic law forbids, the Legislature may extend the jurisdiction beyond the territorial limits of the municipalities. The authority found in the Constitution is to vest jurisdiction in municipal courts “concurrent with the jurisdiction of [JPs] in criminal and civil matters” The Constitution does not by its express terms restrict the jurisdiction of [JPs] to the territorial limits of the township in which they are elected to serve, therefore the jurisdiction of municipal courts finds no such restriction in the Constitution.

Id. at 84-85, 913 S.W.2d at 262 (quoting *State v. Woodruff*, 120 Ark. 406, 179 S.W. 813 (1915)).

109. *Id.* at 85, 913 S.W.2d at 262.

110. *Id.*, 913 S.W.2d at 262.

111. *Webb*, 323 Ark. at 86, 913 S.W.2d at 262 (quoting Brief for Appellees). The appellees argued that the “result of this system is that persons not residing in a city having a municipal court are effectively denied equal protection and due process of law under both the United States and Arkansas Constitutions.” *Id.*

112. *Id.*, 913 S.W.2d at 262-63 (emphasis added, to reflect usage of the less definitive noun *territory*, rather than *county*, *district*, etc.).

us . . . after the mandatory appeal to a circuit court where the issue may 'disappear.'"¹¹³

Notwithstanding that the court prides itself on not issuing advisory opinions, Justice Newbern concluded with an unusual commentary:

There might be a legitimate equal protection argument . . . , but it has not been made here . . . [,] that one class is composed of the residents of the city . . . enfranchised to elect the municipal judge; the other . . . composed of . . . residents of the county who are not so enfranchised. Misdemeanors committed in the . . . county . . . outside any city may . . . be adjudicated by a court not elected by the residents of the *place* where the crime allegedly occurred. It might be argued that citizens have a right to elect the person who tries the cases which arise in the *territory* in which they reside. Such a class of persons is obviously not contemplated in this case and is not present. Two of the appellees are residents of Bentonville, and one is a resident of another state.¹¹⁴

"Lying beneath the challenge to county-wide jurisdiction of municipal courts," the court continued, "is the specter of improper forum shopping and perhaps some corruption in the process That was the allegation in *Griffin* . . . and in *Pschier*."¹¹⁵ Defendants in those cases complained of being charged with offenses near one municipality, then "inexplicably cited to appear in a municipal court serving a city some distance away."¹¹⁶ Justice Newbern opined that the court was "unable to reach that issue because, by the time the cases reached us, they had been the subjects of *de novo* trials in a circuit court where the argument did not apply."¹¹⁷

Apparently none of the *Webb* defendants complained they were "being hailed [sic] into a court which was not the nearest to the place where the offense occurred."¹¹⁸ The State conceded that "there may be good reasons for objecting to a system which might permit improper forum shopping," but argued that "none of them amounts to a constitu-

113. *Id.* at 85, 913 S.W.2d at 262.

114. *Id.* at 86, 913 S.W.2d at 263 (emphasis added, to reflect usage of *territory* and *place*, rather than *county*, *district*, etc.). Such argument, the court noted, would have to reckon with *Holt Civil Club v. City of Tuscaloosa*, 439 U.S. 60 (1978), where an Alabama law permitting cities to set municipal court jurisdiction three miles beyond their city limits was held not to violate equal protection as to the citizens of the three-mile area. *Webb*, 323 Ark. at 86-87, 913 S.W.2d at 263.

115. *Webb*, 323 Ark. at 87, 913 S.W.2d at 263.

116. *Id.*, 913 S.W.2d at 263.

117. *Id.* at 87, 913 S.W.2d at 263.

118. *Id.*, 913 S.W.2d at 263.

tional basis for holding a municipal court lacks *jurisdiction* of misdemeanors committed in the county in which it sits but beyond the limits of the city in which it is situated."¹¹⁹

The appellees, asking for a rehearing, claimed that the court had erred in its equal protection "explanation" by overlooking that some of the appellees *were* residents of Benton County, though not of Rogers or Bentonville.¹²⁰ In a supplemental opinion, Justice Newbern wrote:

The argument that the three . . . residents of Benton County . . . were denied equal protection . . . was answered . . . by pointing out that [criminal] jurisdiction . . . has necessarily to do with [where] the crime is alleged to have been committed rather than the residence of the defendant. It would be ludicrous to hold that a class of persons consisting of defendants not enfranchised to elect the judge was being denied equal protection We pointed out that it was apparently not the intention of the appellees to assert they constituted such a class, as two . . . were [from] Bentonville and one . . . from another state.¹²¹

Feeling that the appellees (and Justice Glaze, author of a concurring opinion) were missing his equal protection point, he restated it:

[A] good equal protection question might have been raised by an "argument . . . that one class is composed of the *residents of the city who are enfranchised to elect the municipal judge; the other . . . composed of the other residents of the county who are not so enfranchised.*" The question would be whether persons residing in the county, but not in a city served by a municipal court, would be entitled to have allegations of criminal conduct occurring in their *locality* adjudicated by a court elected by them as opposed to a court elected solely by residents of a city.¹²²

Saying the others had misunderstood him, he said he "did not misunderstand the . . . appellees, nor were any asserted facts overlooked in our deliberation and resolution of this case."¹²³

119. *Id.*, 913 S.W.2d at 263 (emphasis added).

120. *State v. Webb*, 323 Ark. 87-B, 920 S.W.2d 1 (1996).

121. *Id.*, 920 S.W.2d at 1.

122. *Id.*, 920 S.W.2d at 1 (second emphasis added). Justice Glaze's use of the vague term *locality*, rather than something more precise, reflects the frustration the justices must have felt in dealing with these cases as to which precedent clearly indicated that the courts in question had proper jurisdiction and venue, but as to which a certain logic, difficult to express in words, indicated that there was something wrong in the system somewhere.

123. *Id.* at 87-C, 920 S.W.2d at 1.

Weighing in with a concurring opinion, Justice Glaze recognized allegations sufficient to place four of the appellees in the potentially aggrieved class.¹²⁴ He felt the dispositive point was that constitutional issues cannot be raised in a petition for writ of prohibition.¹²⁵ He noted that municipal court defendants had filed for a writ of prohibition, “alleging the two municipal courts lacked county-wide *venue*”; that a circuit court issued the writ; and that the state appealed.¹²⁶ As appellees, the same defendants were arguing, he noted, that “to allow a municipal court to hear misdemeanor actions occurring outside the city . . . violated . . . equal protection” and that “one who does not reside in Bentonville may not vote in the election of Bentonville’s municipal court, and the result . . . is the persons not residing in a city having a municipal court are effectively denied equal protection.”¹²⁷

Because three appellees were arrested in Bella Vista—and lived there or in Centerton—and one was arrested “in the Gann Ridge Road county area [and] resided in Avoca . . . these four . . . had standing and fall within the alleged violated class of persons who reside in Benton County, and are not enfranchised to elect the municipal judge before whom they are charged,” Justice Glaze concluded.¹²⁸ Noting that the State had renewed “its argument [that] defendants in criminal cases cannot raise constitutional issues by means of a writ of prohibition,” Justice Glaze agreed: “[I]n retrospect, our court should have rejected the defendants’ equal protection argument for this reason without stating more.”¹²⁹

C. Where the Case Law Leaves Us

This much-litigated precept holds that if a city judge presides over an offense committed outside the city, the “no jurisdiction” defense is not available, unless the offense occurred outside the county, even if within the city, in which event pre-trial dismissal is without prejudice.¹³⁰ Stated simply and realistically, the jurisprudence features defendants (1) challenging the inferior court’s venue to the inferior court itself and losing; (2) petitioning the circuit court for a writ of

124. *Id.* at 87-D, 920 S.W.2d at 2 (Glaze, J., concurring).

125. *Id.*, 920 S.W.2d at 2 (Glaze, J., concurring).

126. *Webb*, 323 Ark. at 87-C, 920 S.W.2d at 1 (Glaze, J., concurring).

127. *Id.*, 920 S.W.2d at 1 (Glaze, J., concurring).

128. *Id.* at 87-C, 87-D, 920 S.W.2d at 2 (Glaze, J., concurring).

129. *Id.* at 87-D, 920 S.W.2d at 2 (Glaze, J., concurring).

130. *State v. Osborn*, 345 Ark. 196, 203, 45 S.W.3d 373, 377-78 (2001).

prohibition, within which proceeding they are not allowed to raise constitutional issues, and losing; (3) being unable to appeal at this point because neither venue decisions (pro or con) nor denials of writs of prohibition are final, appealable orders (and the trial de novo appeal to circuit may cure all defects); (4) going to trial in the inferior court and losing; (5) appealing to circuit and losing on trial de novo; (6) being unable to raise the inferior court venue issue because the venue issue was cured at the circuit court level; and (7) being unable to raise constitutional issues on appeal, if the appeal is from a decision on a writ of prohibition. In the Arkansas Supreme Court, *jurisdiction* typically overtakes *venue* as the key issue. The nomenclature is not consistent, but perhaps that is to be expected, as the court itself has remarked that *venue* and *jurisdiction* "are often used interchangeably."¹³¹

Justice Newbern, in *Webb*, used the phrase *territorial jurisdiction*, as distinguished from venue, which "deals with the place where a trial may be had."¹³² Justice Corbin, in *State v. Osborn*¹³³ (which, though not concerned with district court issues, may nevertheless have implications for it, based on an apparently new distinction between *venue* and *jurisdiction*), used the phrase *local jurisdiction*, which "deals . . . with where the offense is to be tried."¹³⁴ At least one Arkansas scholar,

131. *Id.* at 199, 45 S.W.3d at 375.

132. *State v. Webb*, 323 Ark. 80, 83, 913 S.W.2d 259, 261 (1996).

133. 345 Ark. 196, 45 S.W.3d 373 (2001).

134. *Id.* at 199, 45 S.W.2d at 375. Justice Corbin noted:

Ordinarily, venue refers to the geographic area, like a county, where an action is brought to trial [J]urisdiction is generally thought of as the power of a court to decide cases, and it presupposes control over the subject matter and the parties One type of jurisdiction is known as local jurisdiction [which] . . . "deals only with where the offense is to be tried, not with whether the state lacks the basic authority to apply its criminal law to the events in question."

Id., 45 S.W.2d at 375 (citing WAYNE LAFAYE, CRIMINAL PROCEDURE §16.1(a) (2d ed. 1999)). Quite arguably, Justice Corbin virtually equated *local jurisdiction* with *venue*, though he wrote that the *Osborn* facts presented "an issue of local jurisdiction, not venue." *Id.*, 45 S.W.2d at 375. In *Osborn*, the defendant was interviewed in Crawford County about a Franklin County homicide. *Id.* at 198, 45 S.W.2d at 374. Alleging that he provided false information, the State charged Osborn in Franklin County with hindering prosecution. *Id.*, 45 S.W.2d at 374; see ARK. CODE ANN. § 5-54-105 (Michie Repl. 1997). The trial court held that Crawford County was the proper *venue* and dismissed the case. *Osborn*, 345 Ark. at 199, 45 S.W.3d at 375. The supreme court reversed, holding that because the "effects" of the offense were felt in Franklin County, a statute providing for concurrent *jurisdiction* of multiple counties applied. *Id.* at 202-03, 45 S.W.2d at 397; see also ARK. CODE ANN. § 16-88-108(c) (Michie 1987). No municipal courts were involved. The effect of *Osborn*, though unstated in the opinion, is that when a rule of law gives a court territorial jurisdiction, venue will always be proper in that court. Under *Osborn's* facts, venue would be proper in whichever of two

Professor John Watkins of the University of Arkansas at Fayetteville, believes that "Justice Newbern got it exactly right Personal jurisdiction goes to the power of the court to act. Venue is not about power but convenience."¹³⁵

Territorial jurisdiction is to a court what *in personam* jurisdiction is to a defendant. The concept is that the *person* was in the *territory* when the deed was done. For a century this *jurisdiction* has been co-terminal with the county line where criminal subject matter jurisdiction of municipal courts is concerned. Frankly, the law now seems to be that if a trial judge calls it *venue*, the case is transferred; if she calls it *jurisdiction* (without a qualifier), the case is dismissed (though without prejudice). The popular, if informal, notion is that when *intra*-county movement of a case occurs, venue is involved, but if *inter*-county movement occurs, then jurisdiction is involved.¹³⁶

The key characteristic of venue is that it "relates to practice and procedure and may be waived."¹³⁷ As simple as that seems, several cases upholding countywide jurisdiction on the basis that intra-county case-shifting was a venue matter were 4-3 decisions, with vigorous dissent. The theme of such dissents has been that when a law enforcement agent *chooses* a court other than the one most logically associated with the point of arrest, it looks like forum-shopping.¹³⁸

courts with jurisdiction handled the case. Another logical way to view the situation is that the statute works a waiver of any venue other than that chosen by the State (i.e., the defendant, by lying about his knowledge of events in Franklin County, waived his right to demand a Crawford County venue on the charge of hindering prosecution).

135. E-mail from John J. Watkins, Esq., to the Honorable Vic Fleming, Little Rock District Judge, Second Division (Aug. 22, 2001, 09:30:00 CST) (on file with author).

136. A statute that speaks of moving a case between municipal courts in the same county refers to *change of venue*. ARK. CODE ANN. §16-17-116 (LEXIS Repl. 1999). Unfortunately, this is the only statute that speaks to the issue of changing venue in district court cases, and it provides that a defendant must show almost overt prejudice in order to be entitled to a venue change. Another statute speaks of municipal judges' *exchanging jurisdiction* "[in] their respective city and county districts." *Id.* § 16-17-102 (LEXIS Repl. 1999). This statute provides a loose standard by which district judges may shift their dockets among each other without regard to where cases arose or whether the presiding judge was elected from the area in which the offense was committed. The latter's broad wording accommodates inter- and intra-county relocation of hearings, as well as the inter- or intra-county travel by judges to sit for each other. I have used it to send a case to a neighboring county and to have another judge travel to Little Rock to sit for me.

137. *Griffin v. State*, 297 Ark. 208, 210, 760 S.W.2d 852, 853 (1988) (Glaze, J., concurring).

138. Moneys collected as a result of municipal court criminal proceedings are deposited into the treasury of the city in which the court is located and is available for "general municipal purposes." See ARK. CODE ANN. §16-17-119 (LEXIS Repl. 1999). Suggestions of monetary motive are less than veiled in Justice Hickman's dissents in

This lament could be rectified by a venue statute or court rule, mandating transfer to required geographically logical or convenient venues on timely objection, or by a directive from the Attorney General, directing that district court cases be prosecuted in specified courts, based on geographical logic or convenience. Especially where traffic cases are concerned, this would likely have satisfied the dissenters, as traffic cases tend to produce revenue, the motive oft-cited for why a traffic defendant stopped in one town wound up in court in a town several miles distant.

As to non-traffic cases, a similar rule or directive governing venue might tolerate prosecutorial flexibility for some cases, such as those involving a particular expertise or those in which obvious economies are served, though not to the detriment of the defendants. If legislation implementing Amendment 80 eliminates overlapping territorial jurisdiction of all district courts, then this entire area of discussion may be moot in 2005. But it would not hurt to have a better rule to govern between now and then.

Aside from the practical problems involved with re-filing a dismissed case,¹³⁹ as opposed to transferring a non-dismissed case, had the dissent carried the day, arguably it would have been but a Pyrrhic victory for defendants. Presumably, in theory at least, the same charges would re-surface in a court down the road and closer to home. However, the dissent garnered popular support, as reflected by Acts 1118 and 1574 of 1999, requiring countywide election of municipal judges, except in counties with a population of over 100,000.¹⁴⁰

Griffin, Pschier, and Scott. See Griffin, 297 Ark. at 212, 760 S.W.2d at 855 (Hickman, J., dissenting); *Pschier v. State*, 297 Ark. 206, 760 S.W.2d 858 (1988) (Hickman, J., dissenting); *Pulaski County Mun. Court v. Scott*, 272 Ark. 115, 124, 612 S.W.2d 297, 301 (1981) (Hickman, J., dissenting).

139. In a traffic matter, assuming the arresting officer had jurisdiction to issue the citation, a dismissal without prejudice in district court would involve either creating a file in the dismissing court, retaining a certified copy of the original citation, and returning the original citation to the issuing agency or to the local prosecuting authority for transfer to the prosecuting authority in the appropriate jurisdiction, or, if the dismissing court retained the citation without accommodation to the prosecuting authority, the drafting of an affidavit for an arrest warrant for processing in the appropriate jurisdiction, issuance and service of the warrant, etc.

140. Act of Apr. 15, 1999, No. 1574, 1999 Ark. Acts 1574 (codified at ARK. CODE ANN. §§ 16-17-120 (LEXIS Repl. 1999)); Act of Apr. 5, 1999, No. 1118, 1999 Ark. Acts 1118 (codified at ARK. CODE ANN. § 16-17-130 (LEXIS Repl. 1999)). The bills from which these acts grew were introduced on short notice in the 1999 General Assembly, prompting an inquiry to their sponsors, who candidly stated that certain residents of smaller counties who lived outside the voting parameters of certain municipal judges in their counties believed they should have the right to vote on the

The “system” long ago should have acted on this issue. If it is a venue matter—involving practice and procedure—the executive or judicial branch could have adopted a governing rule. If it is a jurisdictional matter—involving a judge’s right to exercise authority¹⁴¹—the legislative branch could have enacted a more efficient statutory arrangement. Under Amendment 80, the legislature continues to have sole authority to establish territorial jurisdiction in criminal matters; the Supreme Court arguably has concurrent authority to govern venue.

A century of controversial case law bears the message that Arkansas can do better, beckoning the bar to take the lead. The passage of Amendment 80 gives presents the opportunity that we must not pass up.

III. AMENDMENT 80

As discussed above, the key historical issue has been whether a person arrested in an area served by one inferior court may rightfully be haled into an inferior court of a different area, a court whose judge was elected by residents of an area in which the offense, whether traffic-related or otherwise, was not committed. Eight sections of Amendment 80, the state’s new judicial article, bear on this narrow issue.

Section 3 provides: “The Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts.”¹⁴² Section 4 provides

municipal judge before whom they might have to appear. That the solution employed was to expand the universe of municipal judge electors, rather than mandate that law enforcement file cases in geographically logical venues is ironic. The irony is highlighted by federal court precedent, approving circuit court “electoral sub-districts,” in which minority voters, constituting a majority of residents, elect judges who then expressly have territorial jurisdiction exceeding the geography of the area that elects them. *See, e.g.,* *Hunt v. State*, 1991 WL 256900 (Ark. App. Nov. 7, 1991); *see also* *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 69-70 (1978) (applying Alabama law allowing municipal court jurisdiction three miles beyond city limits, holding that residents of unincorporated community had no constitutional right to participate in political processes of city simply because they were subject to its police and sanitary regulations).

141. *See* BLACK’S LAW DICTIONARY 855 (7th ed. 1999). Black’s defines *jurisdiction* as “a court’s power to decide a case or issue a decree,” and provides over two pages of definitions for the word and for phrases encompassing the word. I have intentionally avoided extensive definition of this basic term, assuming the reader to know and understand the basic distinctions among in personam, in rem, and subject matter jurisdiction.

142. ARK. CONST. amend. 80, § 3.

that the Supreme Court "shall exercise general superintending control over all courts of the state."¹⁴³

Section 7(B) provides that district courts "shall have original jurisdiction, concurrent with Circuit Courts, of misdemeanors, and shall also have such other criminal jurisdiction as may be provided pursuant to Section 10."¹⁴⁴ Section 7(C) provides that there "shall be at least one District Court in each county. If there is only one District Court in a county, it shall have county-wide jurisdiction."¹⁴⁵ Section 10 grants the legislature "power to establish jurisdiction . . . and venue" of district courts.¹⁴⁶

Section 16(D) provides that district judges

shall be qualified electors within the geographical area from which they are chosen, and . . . shall reside within that geographical area at the time of election and during their period of service. A geographical area may include any county contiguous to the county to be served when there are no qualified candidates available in the county to be served.¹⁴⁷

Section 17(A) provides that district judges "shall be elected on a nonpartisan basis by a majority of qualified electors voting for such office within the circuit or district which they serve."¹⁴⁸ Section 19(B)(2) provides that district courts "shall have the jurisdiction vested in" all inferior courts.¹⁴⁹

143. *Id.* § 4.

144. *Id.* § 7(B).

145. *Id.* § 7(C).

146. *Id.* § 10.

147. *Id.* § 16(D). The term *geographical area* is, if nothing else, a far less definitive term than analogous nouns of common usage (*city, township, county, district*, etc.). It seems intended to provide flexibility in areas where the case law has disallowed reasoned solutions to practical problems—such as where a city is located on a county line—without abrogating the provision that there be at least one court per county. It will be interesting to see how that term develops. While I have omitted any significant discussion of this section in the text, suffice it to say that, somehow, this section factors into the reasoning of those who hold that Amendment 80 repealed countywide jurisdiction of municipal courts.

148. ARK. CONST. amend. 80, § 17(A). For those who argue that Amendment 80 repealed countywide jurisdiction, the phrase *majority of electors within the district they serve* triggers a thought pattern envisioning a boundary within which all voters (in the judge's election) live and within which a crime must occur for that judge to have jurisdiction over the perpetrator. However, I believe this section's sole significance lies in its changing the electoral quantum, from plurality to majority, for district court judges.

149. *Id.* § 19(B)(2).

One interpretation is that Amendment 80 answers the issue in the negative, that defendants may no longer stand for trial, or any other judicial proceeding, in a court whose judge was not elected by the voters of the district within which the crime occurred. The rationale for this school of thought is that the word *jurisdiction* in section 19(B)(2) refers to subject matter jurisdiction only and, therefore, beginning in 2005, a district judge's authority to hear *criminal* cases, under section 7(B), will be limited, under sections 7(C) and 17(A), to those arising within the district in which her electors reside.

Another interpretation is that Amendment 80 did not really effect a change as to the issue, leaving the resolution, or lack thereof, suggested by the case law. The rationale for this mode of thinking is that section 19(B)(2)'s use of the word *jurisdiction* is broader, elaborating upon earlier stated concepts; that it encompasses subject matter, personal, territorial, and whatever other type of jurisdiction there may be, and, therefore, the status quo of countywide jurisdiction prevails, until legislation or court rule states otherwise. Stated differently, section 7(B)'s language, "shall have original jurisdiction . . . of misdemeanors [and] such other criminal jurisdiction as may be provided,"¹⁵⁰ is so clearly a *grant* of subject matter jurisdiction that the later language of section 19 cannot be concerned with that topic, as such would be needlessly redundant. Through the logic of the language and the overall linguistic flow of the amendment, section 19(B)(2)'s significance lies in its emphasis that district courts will usurp all other inferior courts, as regards the all-inclusive concept of *jurisdiction*.¹⁵¹

To explore the two theories, one must examine whether Amendment 80 supersedes Arkansas Code Annotated title 16, chapter 17, section 206's grant of countywide jurisdiction to district courts.¹⁵² Section 10 grants the legislature "power to establish jurisdiction . . . and venue" of district courts.¹⁵³ That seems a logical place to look for language repealing this statute, whether in response to case law or otherwise. While Section 10 seems to address some case-related

150. *Id.* § 7(B).

151. *See supra* note 141.

152. *See supra* note 9.

153. ARK. CONST. amend. 80, § 10.

issues,¹⁵⁴ it seems devoid of express intent to override prior law on this point.

However, section 206 has been upheld on the basis of the 1874 Constitution's "Old Judicial Article," which now stands repealed by Amendment 80. Other Amendment 80 language arguably is inconsistent with section 206. So, a legitimate issue is whether it was implicitly repealed. If the legislature were, for instance, to enact a law providing for citywide election of certain district judges, but establish territorial jurisdiction as the city's planning jurisdiction (five miles out from the city limits or half way to the next city),¹⁵⁵ effectively establishing an arrangement similar to the one upheld in *Holt*,¹⁵⁶ would that Act withstand a challenge?

The Honorable David Stewart, my colleague on the district court bench in Little Rock, would say no. He believes that section 7(C) of the amendment impliedly repealed section 206, reasoning that if there is only one district court in a county, it has countywide jurisdiction "in every respect . . . venue, territory, jurisdiction, election and service" and that this "logically [implies] that if the county has two . . . or more separate district courts, those courts also have separate areas that define and restrict venue, territorial jurisdiction, service and election."¹⁵⁷

That interpretation is logical and easy to embrace. I certainly do not oppose it. It naturally falls into place if the intent of the amendment was to adopt the dissenting view in the case law. Judge Stewart is not alone in his belief that this was part of the intent. However, I submit that this intent is difficult to find in the language of Amendment 80. I also submit that if this is the proper interpretation, then it becomes a real chore for the legislature to fashion a plan calling for any district courts in the state to have overlapping jurisdictions, unless, in those geographic areas, a venue rule is imposed. Otherwise, there will be the appearance of revenue-oriented court selection, at least in some instances. History teaches that traffic cases will be the focal point of

154. Section 10 provides that the legislature is to establish districts and the appropriate number of judges for each, districts to be composed of "contiguous territories." This provision, read with Section 7(D) ("A District Judge may serve in one or more counties") vis-à-vis *Springdale v. Jones*, 295 Ark. 129, 747 S.W.2d 98 (1988), and *Sexson v. Municipal Court*, 312 Ark. 261, 849 S.W.2d 468 (1993), addresses the need in cities on county lines.

155. ARK. CODE ANN. § 14-56-413 (Michie Repl. 1998).

156. See *supra* note 114.

157. Letter from the Honorable David Stewart, Little Rock District Judge, Third Division, to Honorable Vic Fleming, Little Rock District Judge, Second Division (Aug. 6, 2001) (on file with author).

forum-shopping allegations. If Amendment 80's intent was to repeal countywide jurisdiction, then surely its intent also was to eliminate "the specter of improper forum shopping."¹⁵⁸

The end of having a judge sit *primarily* on cases arising from areas consisting of his electors is achievable. But in my opinion, Amendment 80 alone did not achieve this end. The General Assembly may enact legislation establishing district court jurisdiction coextensive *only* with the respective districts of the courts. Unless it does so, however, I submit that countywide jurisdiction¹⁵⁹ will continue to be the rule. Even if it does so, there is the possibility for some overlapping jurisdictions, such as areas in which one judge is elected countywide and one or more others elected citywide.

Arguably, a joint reading of sections 10, 3, and 4 of Amendment 80 reflect a grant to the supreme court of express concurrent authority with the legislature over venue. While venue statutes are sprinkled throughout the state and federal codes,¹⁶⁰ venue also may be the topic of procedural rules.¹⁶¹

158. *State v. Webb*, 323 Ark. 80, 86, 913 S.W.2d 259, 263 (1996), *supp. op. on denial of reh'g*, 323 Ark. 87-A, 920 S.W.2d 1 (1996).

159. *See supra* note 9.

160. *E.g.*, 28 U.S.C. § 1391 (1994 & Supp. V 1999) (governing in general all civil actions in United States District Court); *id.* § 1965 (1994) (governing venue in RICO cases); 47 U.S.C. § 227(f)(4) (1994) (specifying for states to file civil actions against unlawful telephone solicitors); ARK. CODE ANN. § 5-2-317 (Michie Repl. 1997) (permitting venue in Pulaski County Probate Court, Ninth Division, for some persons committed to DHS custody; requiring venue for some who have been conditionally released to be in probate court of the county where the person currently resides); ARK. CODE ANN. § 16-60-109 (Michie 1987) (permitting venue of contract actions against nonresident in county of plaintiff's residence when claim arose); *id.* § 16-60-202 (Michie 1987) (specifying no venue change in civil actions unless necessary for impartial trial); *id.* § 23-32-1505 (LEXIS Repl. 2000) (permitting foreign investor companies to sue and be sued in county of residence of any party to the suit; where land is involved, venue shall be in the county where land is located); *id.* § 28-40-102 (Michie 1987) (governing venue for probate and administration of will); *id.* § 28-65-202 (Michie 1987) (governing venue for appointment of guardian). This list is far from complete. Searches for "venue" on electronic legal research servers produce dozens of statutes that contain the word.

161. *E.g.*, FED. R. CRIM. P. 18. Rule 18 provides the following:

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

Id. A search of Arkansas court rules for "venue" reflects only seven that contain the word: ARK. R. CRIM. P. 21.3 (stating that two or more offenses are "related" if, inter alia, "within the jurisdiction and venue" of same court); ARK. R. CRIM. P. 24.9 (deeming defendant who requests transfer of charges to waive "venue as to an offense committed in another governmental unit of the state" when pleading to offenses committed in other

There is no statute mandating venue for criminal cases in district courts.¹⁶² Absent a statute in an area of concurrent authority, the court may promulgate a rule. The Attorney General, by a directive to all prosecutors, could accomplish the desired end less formally.

If 2005 finds any of our state's district courts with overlapping territorial jurisdiction, then a venue statute, rule of court, or prosecutorial edict will be needed to bring about optimum fairness.

IV. SUBJECT MATTER JURISDICTION

The new district courts are to be "trial courts of limited jurisdiction as to amount and subject matter, subject to the right of appeal to Circuit Courts for a trial *de novo*."¹⁶³ Limited subject matter jurisdiction, both civil and criminal, reflects the status quo, along with a civil case "jurisdictional amount,"¹⁶⁴ five-thousand dollars, within which jurisdiction has been concurrent with circuit courts.

However, the new district courts' jurisdictional amount and subject matter of civil cases "shall be established by Supreme Court rule."¹⁶⁵ This concept is new. Determination of civil jurisdiction will be the exclusive province of the supreme court. Effecting changes in this area will henceforth involve a different process¹⁶⁶ from that of passing legislation. Depending on how the Court chooses to employ this power, significant changes are possible at the inferior court level.

A. Circuit Court Backlog

Civil cases that have caused circuit court backlogs may merit concurrent jurisdiction in district court. Docket overcrowding and a faster track to case disposition are both goals that considerable effort has gone into in recent years. Whether they were expressly among the

jurisdictions); ARK. R. CIV. P. 8, 12, 82; ARK. INF. CT. R. 2 ("These rules shall not be construed to extend or affect the jurisdiction of the inferior courts . . . or the venue of actions therein"); ARK. SUP. CT. P. REGULATING PROF'L CONDUCT § 5K (providing venue for attorney disbarment proceedings).

162. *Griffin v. State*, 297 Ark. 208, 210-11, 760 S.W.2d 852, 854 (1988) (Glaze, J., concurring).

163. ARK. CONST. amend. 80, § 7(A).

164. ARK. CONST. amend. 64; ARK. CODE ANN. § 16-17-704 (LEXIS Repl. 1999).

165. ARK. CONST. amend. 80, § 7(B).

166. The process for the supreme court's promulgation of a rule is, as best I can tell, not reduced to a formulaic process. Thus, any suggestion I might make regarding how to employ it would be speculative. There are committees in place as to most sets of rules, and membership of those committees is a matter of public record.

problems that Amendment 80 was intended to solve, this opportunity must not be overlooked.

B. Real Estate Cases

In the Arkansas Code, title 16, chapter 17, section 206(a)'s provision that "Municipal courts . . . shall not have jurisdiction in civil cases where a lien on land or title or possession thereto is involved" is arguably at odds with the provision that the supreme court may "establish" subject matter jurisdiction of district court civil cases. This statute, thus, may impliedly have been repealed, portending that district courts might be accorded jurisdiction in real estate matters that otherwise fall into their subject matter jurisdiction and within their jurisdictional amount.

There is precedent for a court rule to override a statute in matters of practice and procedure, but not in areas of substance, such as the conferring of subject matter jurisdiction.¹⁶⁷ However, the Arkansas Constitution now gives the court the authority to confer civil subject matter jurisdiction.

C. Felonies

District courts are to have original jurisdiction over misdemeanors and "such other criminal jurisdiction as may be provided pursuant to Section 10 of this Amendment."¹⁶⁸ Under the repealed judicial article of the 1874 Constitution, municipal courts were without jurisdiction to try felony cases.¹⁶⁹ It is now plausible that some degree of felony jurisdiction will devolve upon district courts.

Especially given the model of United States Magistrate Courts, it makes sense that felony defendants be allowed to enter guilty pleas and be sentenced in district court. It also makes sense that a felony defendant be allowed to plead not guilty in district court, with the case then passing expeditiously to a circuit judge's trial docket. Why arraign a defendant twice?

Bond set by a district court would be subject to review by the circuit court. District judges could even be employed to handle pre-trial

167. See *State v. Lester*, 343 Ark. 662, 38 S.W.3d 318 (2001); *Curtis v. State*, 301 Ark. 208, 783 S.W.2d 47 (1990).

168. ARK. CONST. amend. 80, § 7(B).

169. See *McGrew v. State*, 338 Ark. 30, 991 S.W.2d 588 (1999); *McArthur v. Pulaski County Circuit Court*, 253 Ark. 501, 488 S.W.2d 5 (1972).

discovery and evidentiary matters, an innovation that could enhance efficiency and expedite case progress, especially in rural areas where circuit judges are not in court on a daily basis, although this arrangement would require some creative thinking by the supreme court as it fashions its rules and administrative orders in the wake of Amendment 80.

D. Jury Trials?

May the Arkansas Supreme Court empower district courts to hold jury trials, thus overriding title 16, chapter 17, section 703 of the Code, which provides that "[t]here shall be no jury trials in municipal court"?¹⁷⁰ The answer to this question will hinge on how the phrase "subject to the right of appeal to Circuit Courts for a trial de novo" in section 7(B) of Amendment 80 is interpreted, as well as whether the implementation of jury trials might be considered a matter of practice or fall within the realm of general superintending control.

To characterize the right to trial by jury as a matter of practice that would be subject to the court's superintending authority is probably out of kilter with the spirit of the common law. It assuredly has always been assumed that only the legislature has the authority to grant or encroach upon this vital right. In my opinion, the legislature *could* authorize jury trials in district court, but the supreme court could not. The legislature has had this power, but has opted not to implement jury trials in inferior courts.

Amendment 80 does not seem inconsistent with section 703. In specifying "trial de novo" as the appellate right at the circuit court level, Amendment 80 perpetuates the doctrine that has sustained the statutory scheme of exclusively bench trials at the inferior court level.¹⁷¹ In my opinion, no one has a right to *demand* that jury trials be available in district courts, since the right to jury trial is preserved at the circuit court level on appeal.

If, in some manner, jury trials were allowed in district courts, other issues arise. May a de novo appeal to circuit court be something less than another trial? Could a district court jury trial be reviewed by a circuit court on the record, in the de novo manner that chancery matters are reviewed by the appellate courts? (Chancery matters, of course, were always bench trials.) Is the right to a trial de novo in circuit court

170. ARK. CODE ANN. § 16-17-703 (LEXIS Repl. 1999).

171. See *State v. Roberts*, 321 Ark. 31, 900 S.W.2d 175 (1995).

waivable in the event litigants opt for a jury trial in district court and, if so, then might an appeal to circuit be handled on less than a *de novo* standard of review?

Pondering the potential, I can only envision that many of us may have to become more willing to work *with* others in circumstances where we have been accustomed to working *without* others. Society's needs for common sense, practical wisdom, and creativity from the judiciary were not repealed by Amendment 80. Nor was the appropriateness of teamwork and innovation in the judicial process.

V. CONCLUSION

Admittedly, the foregoing discussion raises more questions than it answers. But the issues discussed in this article are concerned with the grass roots of the judicial system and, as such, deserve the attention of the entire bar. The passage of Amendment 80 was a watershed event, a dividing point between how things used to be and how they should be. Whether or not an Arkansas lawyer is a regular practitioner in district court, he or she should reflect on the discussion above and get involved at one level or another as this discussion wends its way toward the final law-making process.

We of the legal profession in Arkansas have an awesome opportunity and responsibility to re-build a court system. We know the areas that have evoked negative criticism in the past. If we do not learn from the lessons of history, to twist an adage, we are destined to go there again. I encourage all Arkansas attorneys and law students to get involved in this effort to build a new district court system with intelligence, common sense, and pride. Let's make it work.

